

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 22, 2008

GUSTAVO GARCIA REYES v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2006-C-2594 J. Randall Wyatt, Jr., Judge

No. M2007-02095-CCA-R3-CD - Filed April 24, 2008

The Defendant pled guilty to one count of evading arrest and two counts of aggravated vehicular homicide, and the trial court sentenced him to an effective sentence of twenty-five years. The trial court denied the Defendant's motion to reduce or modify his sentence, which the Defendant filed pursuant to Tennessee Rule of Criminal Procedure 35(b). On appeal, the pro se Defendant claims: (1) the trial court abused its discretion by denying his petition for habeas corpus relief; and (2) the trial court abused its discretion by erroneously finding facts. After a thorough review of the facts and the applicable law, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JAMES CURWOOD WITT, JR., JJ., joined.

Gustavo Garcia Reyes, Tiptonville, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Lisa Naylor, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

A. Procedural History

On April 9, 2007, the Defendant pled guilty to one count of evading arrest and two counts of aggravated vehicular homicide. The trial court sentenced him to concurrent twenty-two year sentences for each count of aggravated vehicular homicide. Additionally, the trial court sentenced the Defendant to three years, to be served consecutively to the other sentences, for evading arrest. In effect, the Defendant was sentenced to twenty-five years in confinement. On August 15, 2007,

the Defendant filed a motion to reduce or modify his sentence, pursuant to Tennessee Rule of Criminal Procedure 35(b).

The trial court denied the Defendant's motion to reduce or modify his sentence. In its order, the trial court stated that it found the Defendant "[did] not provide any persuasive reason to consider the instant [m]otion." The court continued, saying, "The Court finds that the [Defendant] voluntarily chose to plead guilty to the above charges and accepted the above sentences." It is from this judgment the Defendant now appeals.

II. Analysis

On appeal, the Defendant claims: (1) the trial court abused its discretion by denying his petition for habeas corpus relief; and (2) the trial court abused its discretion by erroneously finding facts. The Defendant couches his second issue in terms of the federal courts having the power to grant a writ of habeas corpus if the state trial court misapplied a legal principle to a defendant's case. Additionally, the Defendant seeks to have his sentences modified due to the "interests of justice." The State argues that the Defendant's sentences should not be modified because there are no unforeseen, post-sentencing developments. Additionally, the State argues the Defendant never filed a petition for a writ of habeas corpus, and he also did not provide an adequate record for review.

The Defendant filed a motion to reduce or modify his sentence. Rule 35 of the Tennessee Rules of Criminal Procedure articulates the components for such a motion, including, "(a) Timing of Motion. The trial court may reduce a sentence upon motion filed within 120 days after the date the sentence is imposed or probation is revoked. No extension shall be allowed on the time limitation. No other actions toll the running of this time limitation." Additionally, Rule 35 Advisory Commission Comments state, "The intent of this rule is to allow modification only in circumstances where an alteration of the sentence may be proper in the interests of justice. The modification permitted by this rule is any modification otherwise permitted by the law when the judge originally imposed [the] sentence." When the appellate court reviews the denial of relief on a motion to reduce or modify a sentence, the standard is whether the trial court abused its discretion. *State v. Irick*, 861 S.W.2d 375, 376 (Tenn. Crim. App. 1993).

We conclude the trial court did not abuse its discretion when it found the Defendant did not provide sufficient reason to reduce or modify his sentence. The Defendant's argument consisted of the allegations that the District Attorney failed to deport him, failed to help him with his alcohol addiction, and failed to require he get alcohol addiction treatment. The Defendant then claims that, because he would like to get treatment for his alcohol addiction and he has a family, the court should modify his sentence. We agree with the trial court's conclusion that this is not sufficient to reduce or modify the Defendant's sentence.

Specifically addressing the Defendant's claim that his writ of habeas corpus was improperly denied, we point out that the Defendant did not file a petition for habeas corpus relief. Moreover, even if he mistakenly titled his motion, he still did not state a claim for which habeas corpus relief

may be granted. Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. *See Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). Although the right is guaranteed in the Tennessee Constitution, the right is governed by statute. T.C.A. § 29-21-101 (2006) *et seq.* The determination of whether habeas corpus relief should be granted is a question of law and is accordingly reviewed de novo. *Smith v. Lewis*, 202 S.W.3d 124, 127 (Tenn. 2006); *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Although there is no statutory limit preventing a habeas corpus petition, the grounds upon which relief can be granted are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). It is the burden of the petitioner to demonstrate by a preponderance of the evidence that “the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). In other words, the very narrow grounds upon which a habeas corpus petition can be based are as follows: (1) a claim there was a void judgment which was facially invalid because the convicting court was without jurisdiction or authority to sentence the defendant; or (2) a claim the defendant’s sentence has expired. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). “An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time.” *May v. Carlton*, — S.W.3d —, 2008 WL 160695, at *3 (Tenn. 2008) (citing *State v. Burkhard*, 566 S.W.2d 871, 873 (Tenn. 1978)). In contrast, a voidable judgment is “one that is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.” *Taylor*, 995 S.W.2d at 83; *see State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000). Instead of claiming that his sentence was void on its face, he claimed it should be altered in the interests of justice. This is not a cognizable habeas corpus claim.

As for the Defendant’s argument that the federal courts have a right to issue a writ of habeas corpus when the state trial court erroneously finds facts, we cannot grant relief on that claim. Whether or not the Defendant’s contention is correct, this Court is the Tennessee Court of Criminal Appeals, and it is not a part of the federal court system. We have no authority to rule as a federal court.

Finally, we conclude the Defendant is not entitled to relief because Rule 35(a) requires the Defendant file his motion to reduce or modify his sentence within 120 days of the judgment. The Defendant pled guilty, and the trial court sentenced him on April 9, 2007. The Defendant’s motion was not filed until August 15, 2007. The August 15, 2007 date is more than 120 days after the April 9, 2007 judgment date. Rule 35 is quite clear that the time limit may not be extended or tolled. Tenn. R. Crim. P. 35(a). Therefore, the Defendant’s motion was filed too late for the trial court to grant him relief.

III. Conclusion

After a thorough review of the facts of this case and the applicable law, we conclude the trial court committed no error. As such, we affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE